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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 **REGENTS OF UNIVERSITY OF**
19 **CALIFORNIA and JANET NAPOLITANO,**
20 **in her official capacity as President of the**
21 **University of California,**

22 **Plaintiffs,**

23 **v.**

24 **UNITED STATES DEPARTMENT OF**
25 **HOMELAND SECURITY and ELAINE**
26 **DUKE, in her official capacity as Acting**
27 **Secretary of the Department of Homeland**
28 **Security,**

Defendants.

Case No. 3:17-cv-05211-WHA
Related Case Nos. 3:17-cv-05235-WHA
3:17-cv-05329-WHA
3:17-cv-05380-WHA
3:17-cv-05813-WHA

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE BRIEF OF AMICI
CURIAE THE CITY OF LOS ANGELES, 25
ADDITIONAL CITIES AND COUNTIES
AND THE UNITED STATES
CONFERENCE OF MAYORS IN SUPPORT
OF PLAINTIFFS' JOINT MOTION FOR
PROVISIONAL RELIEF IN ALL RELATED
DACA PROCEEDINGS**

Date: December 20, 2017
Time: 8:00 a.m.
Place: Courtroom 8
Judge: Honorable William Alsup

STATEMENT OF INTEREST OF AMICI CURIAE

Pursuant to this Court's October 25, 2017 Order Regarding *Amicus* Briefing, *Amici* hereby request leave to file the attached *Amici Curiae* brief of twenty-six cities and counties and the United States Conference of Mayors, in Support of Plaintiffs' Joint Motion for Provisional Relief in All Related DACA Proceedings before this Court.¹ *Amici's* proposed brief highlights constitutional, statutory and equitable reasons why the Defendants' actions to terminate DACA are unlawful and should be enjoined. All Plaintiffs in the related DACA cases have consented to *Amici* filing this brief. Defendants indicate that they take no position on *Amici's* request to file.

Amici Curiae are located across the United States and include the City of Los Angeles, California; the City of Austin, Texas; the City of Boston, Massachusetts, the City of Cambridge, Massachusetts; the City of Chelsea, Massachusetts; the City of Chicago, Illinois; Cook County, Illinois; the City and County of Denver, Colorado; the District of Columbia; the City and County of Honolulu, Hawaii; the City of Houston, Texas; King County, Washington; the City of Minneapolis, Minnesota; the City of New York, New York; the City of Oakland, California; the City of Philadelphia, Pennsylvania; the City of Portland, Oregon; the City of Providence, Rhode Island; the City of Rochester, New York; the City of Sacramento, California; the City and County of San Francisco, California; the City of Santa Monica, California; the City of Seattle, Washington; the City of Somerville, Massachusetts; the City of Tucson, Arizona; the City of West Hollywood, California; and the United States Conference of Mayors.²

¹ On September 29, 2017, this Court entered an Order Granting Stipulation Regarding Case Management Order, *Regents of the University of California*, et al. v. *U.S. Department of Homeland Security*, et al., No. 3:17-cv-05211-WHA (ECF 58), stating that "a filing in [the *Regents*] action shall automatically be deemed to be a filing in all of the related actions, unless denoted otherwise." Pursuant to that Order, *Amici* respectfully request this Administrative Motion, Brief of Amici Curiae and Proposed Order to be deemed filed in all related actions.

² The United States Conference of Mayors is the official non-partisan organization of cities with populations of 30,000 or more. There are 1,408 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

1 This litigation is of significant interest to *Amici*, since more than **42%** of all
2 currently active recipients of the Deferred Action for Childhood Arrivals (DACA)
3 program – 290,000 of our collective residents – call *Amici*’s metropolitan areas
4 home.³

5 The Los Angeles, New York, Houston and Chicago metro regions have four
6 of the five largest DACA populations in the United States. According to the United
7 States Citizen and Immigration Service (USCIS), as of September 4, 2017,
8 approximately 13% of all active DACA recipients reside in the Los Angeles metro
9 area. Another 6.8%, 5.2% and 5% of all active recipients reside in the New York,
10 Houston and Chicago metro regions, respectively. Austin, Denver, the San
11 Francisco Bay Area, Seattle and Washington D.C. together account for another
12 9.4% of the active DACA population. Collectively, more active DACA recipients
13 reside in *Amici*’s metro areas than the combined active DACA populations of 45
14 states.⁴

15 Since obtaining deferred action, these DACA recipients – our residents –
16 have made substantial contributions to our respective communities as business
17 owners, educators, researchers, artists, journalists and civic leaders. Tens of
18 thousands more DACA enrollees are attending our local schools, studying to
19 become our newest doctors and nurses, lawyers and entrepreneurs. Many DACA
20 recipients work directly for *Amici*, and play critical roles in our daily government
21 operations. No matter how DACA recipients choose to contribute, all of *Amici* are
22 stronger and safer because of the DACA program. Therefore, *Amici* profoundly
23 object to Defendants’ actions to eliminate DACA, which are as harmful as they are
24 unconstitutional.

25
26 ³ United States Citizen and Immigration Service data show that approximately 800,000 applicants qualified for DACA
27 since the start of the program. Approximately 690,000 DACA recipients currently have active DACA status. For purposes
28 of this brief, residency in a “metropolitan area” is defined as residency in a Core Based Statistical Area (CBSA) at the time
of the DACA recipient’s most recent application. CBSAs are defined by the United States Office of Management and
Budget. See U.S. Citizenship and Immigration Services DACA Data dated “As of September 4, 2017” (USCIS DATA).
Available at: <http://tinyurl.com/USCIS-data>

⁴ *Id.*

1 Since its inception more than two centuries ago, our nation has served as the
2 adopted home of generations of migrant children. Welcoming and protecting young
3 immigrants is part and parcel of our DNA. On June 5, 1904, for example, the
4 Washington Post profiled eleven “matrons” who were charged with caring for the
5 minor children who arrived in the United States through New York Harbor and
6 entered through Ellis Island, a mere 2,750 feet from the Statue of Liberty. In that
7 story, the head matron, Regina Stucklen, noted that the children under her care were
8 “the sweetest things that grow.”⁵

9 More than one million children passed through Ellis Island in its 62 years as
10 an immigration station. Some of those “sweetest things” grew to become laborers in
11 our factories, warehouses and mills, driving our engines of economic growth.
12 Others chose lives in public service, becoming members of our military, teachers,
13 social workers, firefighters and police officers. Many more were homeowners,
14 parents, and taxpayers. Included among those children who entered the United
15 States via Ellis Island were renowned artists, athletes, musicians, and authors, like
16 Irving Berlin, Bob Hope, Claudette Colbert, Knute Rockne, and Frank Capra and
17 institutional leaders, like Los Angeles Archbishop Timothy Manning, San Francisco
18 Mayor George Christopher, and Supreme Court Justice Felix Frankfurter.⁶

19 However they came to our country, the immigrants who arrived here as
20 children helped to build the foundation of *Amici*’s economic prosperity, military
21 security, cultural artistry and civic society. And *Amici* are relying upon a new
22 generation of child migrants, especially those eligible for and protected by the
23 DACA program, to help guide our financial and cultural success into the future.

24 First, the DACA program promotes economic prosperity and benefits
25 taxpayers, which means that *Amici* will suffer direct economic harm if DACA is
26 rescinded. *Amici* rely heavily upon the economic contributions of foreign-born

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28 ⁵ Special Correspondence, *Tots at Ellis Island*, THE WASHINGTON POST (June 5, 1904), available at:
https://secure.pgarchiver.com/washingtonpost_historical/doc/144543811.html.

⁶ Moreno, Barry, *Children of Ellis Island*, ARCADIA PUBLISHING (2005).

1 residents and DACA recipients make up a statistically significant portion of *Amici*'s
2 foreign-born labor force. Collectively, the DACA recipients living in *Amici* cities
3 and counties openly earn billions of dollars in taxable income because of the work
4 authorization benefit provided by the DACA program.⁷

5 A 2017 study by The Institute on Taxation and Economic Policy found
6 DACA recipients pay an estimated \$1.6 billion in state and local taxes annually,
7 giving them a higher effective tax rate than the average state and local tax rate paid
8 by the top 1% of U.S. taxpayers.⁸ Because USCIS data show that DACA recipients
9 are concentrated in *Amici*'s metro areas, those with deferred action are an important
10 subset of the foreign-born populations that are critical to the economy of *Amici*
11 cities. This arbitrary and capricious action by Defendants to eliminate DACA will
12 negatively impact *Amici* by removing hundreds of thousands of workers, business
13 owners and taxpayers from our respective economies.

14 On a micro-economic level, the benefits gained through the DACA program
15 gave recipients of deferred action the encouragement and comfort they needed to
16 openly enter the work force, take on student loans, sign mortgages, and start
17 businesses. Studies show that DACA recipients have in fact made profound
18 economic gains *because of* receiving deferred action. In a representative survey, the
19 Center for American Progress found that 69% of employed recipients moved to a
20 higher-paying job after receiving deferred action and 5% of recipients started a new
21 business after receiving deferred action, which is a rate of business creation greater
22 than among the general public.⁹

23 The Center's study also found that the hourly wages of surveyed DACA
24 recipients increased by an average of 42%; that 60% of those with increased
25

26 ⁷ USCIS DACA Frequently Asked Questions (USCIS DACA FAQ), at Question 1, available at:
27 <https://www.uscis.gov/archive/frequently-asked-questions> (stating that "an individual whose case has been deferred is
eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate 'an
economic necessity for employment.'")

28 ⁸ Available on the ITEP website at: <http://tinyurl.com/ITEPDACAstudy>

⁹ Center for American Progress, *DACA Recipients' Economic and Educational Gains Continue to Grow* (2017) (CAP
Study) Washington, D.C. The CAP Study is available at: <http://tinyurl.com/CAPDACAstudy>.

1 earnings have become financially independent; and that 61% have started to
2 contribute to their family's finances. At least half of all DACA recipients surveyed
3 by the Center reported that they have bought a car since receiving deferred action,
4 12% have bought their first home and 25% have a child who is an American citizen.

5 Terminating this program will not only roll back these financial and familial
6 gains earned by DACA recipients, it will harm *Amici*, in that cities and counties
7 operate – and our taxpayers fund – the social safety net that will be required to
8 catch these families if the DACA recipient's work authorization is taken away and
9 families are forced apart by ICE removals.

10 Second, DACA promotes public safety and public welfare. A study by The
11 Sentencing Project demonstrates that communities with larger immigrant
12 populations, including *Amici*, have outpaced the public safety gains of their peers.
13 In 1990, the reported violent crime rate was 730 offenses per 100,000 residents.
14 That same year the number of foreign-born individuals living in the United States
15 was roughly 19.8 million. The violent crime rate began to fall in the mid-1990s and
16 by 2014 it was half of its 1990 level, at 362 offenses per 100,000 residents. By that
17 year, the foreign-born population had more than doubled, reaching 42.2 million
18 people.¹⁰

19 While The Sentencing Project report notes that these statistics are not
20 definitive in proving causation, the trends establish “a critical fact about immigrants
21 and public safety: crime rates have fallen to historic lows amidst the growth of the
22 foreign-born population.”¹¹

23 Nevertheless, Attorney General Sessions, in announcing the elimination of
24 the DACA program, stated without offer of proof that such action was needed to
25 “save lives” and protect communities from a “risk of crime.” But DACA recipients
26

27 ¹⁰ *Immigration and Public Safety* (2017), The Sentencing Project, Washington, D.C., available at
<http://www.sentencingproject.org/wp-content/uploads/2017/03/Immigration-and-Public-Safety.pdf>

28 ¹¹ *Id.*

1 are not criminals. A study from the CATO Institute concluded that native-born
2 Americans are 14% more likely than DACA-eligible immigrants with the same age
3 and education to be incarcerated.¹² To even qualify for deferred action, applicants
4 must submit detailed personal histories and pass a rigorous background check. And,
5 if they are arrested after obtaining deferred action, they can lose their DACA status.
6 Indeed, very few DACA recipients – only 0.25% – have been expelled from the
7 program for criminal activity or other public safety concerns, which is a rate
8 exponentially lower than the general rate of criminality in American society.¹³

9 What's more, DACA recipients – free to contribute openly to their
10 communities – are being hailed as heroes. Houston-area paramedic Jesus Contreras
11 is a DACA recipient. He worked six straight days after Hurricane Harvey hit
12 southeast Texas, rescuing people from floodwaters and putting his own life in
13 danger. News reports show that had DACA been rescinded during the six days he
14 spent helping people from the hurricane, Contreras could have immediately been
15 pulled from his ambulance reducing the number of available first responders.¹⁴
16 Similarly, many have praised the efforts of the countless volunteers who used their
17 own boats, at their own peril, to rescue their neighbors during Hurricane Harvey.
18 One such Good Samaritan, Alonso Guillen, was a 31-year-old DACA recipient
19 who, according to reports, drowned while trying to save others from the deadly
20 floodwaters that inundated the Houston area.¹⁵

21 Similarly, applicants who pass DACA's strict vetting process were allowed to
22 sign up for U.S. military service as part of a Pentagon program called Military
23 Accessions Vital to the National Interest, or MAVNI. MAVNI was created in 2009
24 to allow foreign nationals to join the United States military if they could

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26 ¹² *The DREAMer Incarceration Rate* (2017), CATO Institute, Washington, D.C. available at:
<https://www.cato.org/publications/immigration-research-policy-brief/dreamer-incarceration-rate>

27 ¹³ *Id.*

¹⁴ Flores, Adolfo *This Paramedic Who Rescued Harvey Victims May Be Deported If Trump Ends DACA*, BUZZFEED
(September 1, 2017) available at: <http://tinyurl.com/paramedicstory>

28 ¹⁵ Carroll, Susan and Kriel, Lomi *Lost in Cypress Creek* HOUSTON CHRONICLE (September 9, 2017), available
at: <http://tinyurl.com/lost-in-cypress-creek>

1 demonstrate desired skills in languages, science or medicine. The day after
2 Defendants moved to terminate DACA, the Pentagon announced that 900 DACA
3 recipients are actively serving or have signed recruitment contracts to serve in the
4 military. This service to our country and our communities, along with others whose
5 service stories have yet to be told, makes *Amici* safer.

6 Third, DACA recipients also bring intangible benefits to *Amici* cities;
7 benefits that directly improve upon, to quote Attorney General Sessions, “the well-
8 being of our Republic.” Much like those children who passed through Ellis Island
9 decades ago went on to become acclaimed actors, athletes, artists and leaders,
10 today’s DACA recipients are helping to weave our modern-day social fabric. Active
11 DACA recipients are employed by at least 72% of the *top 25* Fortune 500
12 companies, many of which are headquartered in *Amici*. There are 250 DACA
13 beneficiaries alone working at Apple Inc., the world’s most valuable company,
14 which is headquartered in Plaintiff County of Santa Clara.¹⁶

15 Among the individual recipients of deferred action are a public school
16 teacher in Austin, Texas with a master’s degree in education focusing on hearing-
17 impaired students; a Los Angeles-based graphic designer who has worked on
18 marketing campaigns for *Star Wars: Rogue One* and *Game of Thrones*; a political
19 organizer based in Washington D.C., who recently served as a press secretary for a
20 2016 presidential candidate; a producer for MSNBC’s *Morning Joe* who helps
21 shape the network’s morning programming and, separately, a licensed attorney and
22 the first member of the New York State Bar with DACA status, both of whom live
23 in New York City.

24 Turning our back on DACA could mean turning our back on the next
25 Archbishop Manning, the next Academy Award-winning Claudette Colbert, or the
26 next Justice Frankfurter. As the National Immigration Law Center stated, when “we
27

28 ¹⁶ Shaban, Hamza *CEO Tim Cook says he stands by Apple’s 250 DACA-status employees*, THE WASHINGTON POST
(September 3, 2017), available at: <http://tinyurl.com/DACAFortune500>

1 as a country empower people through opportunities—rather than pouring so much
2 of our resources into restricting life’s possibilities—society becomes richer ... and
3 more productive. This is why more inclusive policies are so important, not just for
4 idealistic or altruistic reasons, but because in very real terms we have become a
5 better society by providing a pathway to inclusion to these young people.”¹⁷
6

7 Dated: November 1, 2017 **MICHAEL N. FEUER**, City Attorney

8
9 By: 

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¹⁷ <https://www.nilc.org/news/the-torch/10-27-16/>

APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2017, a copy of the foregoing Administrative Motion for Leave to File Amicus Brief of 26 Cities and Counties and the United States Conference of Mayors; the Amicus Brief of 26 Cities and Counties and the United States Conference of Mayors; and a Proposed Order were filed and served pursuant to the Court's electronic filing procedures using CM/ECF.

Dated: November 1, 2017 **MICHAEL N. FEUER**, City Attorney

By: 

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Attorneys for Amicus Curiae City of Los Angeles

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